

Chapter 3

Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014

3.1 Only a small number of submissions commented on the Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014 (the Cost Recovery Bill). Submitters provided comments in relation to the cost recovery mechanism and proposals in relation to action management plans.

Cost recovery proposal

3.2 The Department of the Environment (the department) commented that the cost recovery mechanism will provide the Government with a sustainable source of funds to perform its regulatory role under the EPBC Act and to provide an incentive to proponents to better assist in the environmental impact assessment process.¹ The Minister for the Environment, the Hon Greg Hunt MP, in the second reading speech, stated:

Environmental assessment activities are appropriate for cost recovery because the activities deliver a clear benefit for a particular beneficiary by enabling them to undertake an activity approved under the EPBC Act.²

3.3 He went on to explain:

Cost recovery will also improve the department's ability to meet statutory time frames by providing a sustainable source of resources to improve the efficiency of the assessment process. It will also provide incentives to industry to undertake early engagement and incorporate the most environmentally acceptable outcomes into their business planning, as this may reduce the level of assessment required and therefore any costs payable.³

3.4 Places You Love Alliance supported the proposed cost recovery mechanisms. They claimed it will ensure that the department is adequately resourced to ensure operation of the Act and monitor performance.⁴ Friends of Grassland added that cost recovery may also encourage environmentally sound development, in that a proponent

1 Department of the Environment, Cost Recovery under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) 'Environmental Assessments Frequently Asked Questions', 2014, http://www.environment.gov.au/system/files/pages/07339a5b-6ca9-4923-899d-d9fb4a772a59/files/cost-recovery-faq_0.pdf (accessed on 04/06/2014); Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40.

2 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

3 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

4 Places You Love Alliance, *Submission 55*, p. 5.

would be unlikely to pay an upfront fee unless the proposed action is likely to be approved.⁵

Issues raised in relation to cost recovery

3.5 Many industry groups were opposed to the cost recovery proposals. For example, the Business Council of Australia put the view that cost recovery should only be undertaken where there is a clearly identifiable beneficiary, that is, the benefits of the activity are largely private. The council concluded that 'where the benefits of the activity undertaken are public then it is not appropriate to apply cost recovery to a private proponent'.⁶

3.6 This view was supported by other submitters.⁷ Ms Melanie Stutsel, Minerals Council of Australia, stated:

...we do not support cost recovery in principle to fund the Australian government in carrying out its legislative responsibilities. We instead consider that the implementation of the EPBC Act should be properly resourced from the government's existing revenue base.⁸

3.7 It was also argued that developers already contribute through compliance costs for development assessment and through the substantial tax revenues that derive from development.⁹

3.8 Some opponents to the cost recovery proposal argued that the implementation of cost recovery for matters decided under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) would increase the financial burden on proponents.¹⁰ Further, as noted by the Association of Mining Exploration Companies (AMEC), different industries would have varying capacities to pass on the costs to the end user.¹¹

3.9 The National Farmers' Federation (NFF) argued that: there is little transparency in how the cost base that is to be recovered will be determined; there is no review mechanism, no benchmarking of the costs recovered to determine whether these are efficient, prudent and relevant; and there is a lack of independent regulatory

5 Friends of Grassland, *Submission 41*, p. 2.

6 Business Council of Australia, *Submission 45*, p. 4.

7 Ports Australia, *Submission 3*, p. 5; AMEC, *Submission 8*, p. 2; Minerals Council of Australia, *Submission 32*, p. 8; Australian Petroleum Production & Exploration Association Limited, *Submission 52*, p. 4; Property Council of Australia, *Submission 63*, p. 3. See also, Mr Graham Short, AMEC, Committee Hansard, 10 June 2014, p. 19.

8 Ms Melanie Stutsel, Minerals Council of Australia, *Committee Hansard*, 10 June 2014, p. 59.

9 Australian Petroleum Production & Exploration Association Limited, *Submission 52*, p. 4; Property Council of Australia, *Submission 63*, p. 3; Urban Development Institute of Australia, *Submission 65*, p. 2.

10 Ports Australia, *Submission 3*, p. 5; AMEC, *Submission 8*, p. 3; Australia International Council on Monuments and Sites, *Submission 58*, p. 2.

11 AMEC, *Submission 8*, p. 3.

oversight.¹² In addition, the NFF noted that the Government proposes to provide a small business exemption. However, the exemption is based on turnover as opposed to profit. The NFF argued that this is 'particularly problematic for the agricultural sector' and recommended that the Australian Taxation Office definition of primary producer be adopted and included as an additional exemption.¹³

3.10 As a consequence of these concerns, industry groups have argued that, if cost recovery is implemented:

- there should be a direct correlation between the cost of providing the service and the fees levied, with no cross-subsidisation;
- the process for determining fees should be open and transparent;
- the service should be provided in the most cost efficient and effective manner;
- there should be a review mechanism and/or an independent regulator overseeing the setting of fees; and
- clear timeframes should be established to increase certainty in the processes.¹⁴

3.11 The department responded to these concerns noting that the introduction of cost recovery for environmental assessments under the EPBC Act will mean that each person proposing to take an action that will have or is likely to have a significant impact on a matter of national environmental significance will pay for the services required to assess their application. This results in a more equitable sharing of the costs associated with protecting the environment between the general public and those who will derive a private benefit from environmental assessments.¹⁵

3.12 In relation to concerns about increased burdens on proponents, the department stated that where proponents provide good quality data and upfront information, the assessment process will be more efficient and consequentially the proponent will be made subject to lower fees.¹⁶ Dr Rachel Bacon, Department of the Environment, added:

Cost recovery will also provide incentives to industry to undertake early engagement and incorporate the most environmentally acceptable outcomes into their business planning in order to reduce costs...The implementation of cost recovery under the EPBC Act will provide a sustainable source of

12 National Farmers' Federation, *Submission 30*, p. 2. See also Ports Australia, *Submission 3*, p. 6; Urban Development Institute of Australia, *Submission 65*, p. 3.

13 National Farmers' Federation, *Submission 30*, pp 1–6.

14 Ports Australia, *Submission 3*, p. 7; AMEC, *Submission 8*, p. 3; Minerals Council of Australia, *Submission 32*, p. 8; Business Council of Australia, *Submission 45*, pp 4-5; Australian Petroleum Production & Exploration Association Limited, *Submission 52*, p. 4.

15 Department of the Environment, *Submission 33*, p. 8.

16 Department of the Environment, *Submission 33*, p. 3.

resources to improve the efficiency of the assessment process where the Commonwealth continues to undertake environmental assessments.¹⁷

3.13 Dr Bacon highlighted that cost recovery under the bill will only apply to Commonwealth processes—it will not apply to activities undertaken by states and territories under a one-stop shop system. Cost recovery of state or territory environmental assessment activities will remain a matter for those individual governments.¹⁸

3.14 The department noted that it had consulted widely with a range of affected groups on proposed cost recovery arrangements. The consultation process included publication of a consultation paper in September 2011, which resulted in changes to the proposed arrangements. Following the release of a draft Cost Recovery Implementation Statement in May 2012, the department sought comments from a wide range of stakeholders and hosted a consultation workshop.¹⁹

3.15 The Hon. Mr Greg Hunt MP, Minister for the Environment, in his second reading speech, noted that the bill allows for regulation to set fees and the methods of calculation of a fee. He went on to state that the department would release a cost recovery impact statement which details the fees payable and the methods for calculating fees and concluded 'we will, of course, consult with industry and the community in the process of so doing'. The bill also provides a process for proponents to apply for a reconsideration of the way in which a method may be used to calculate fees.²⁰

3.16 The ministers concluded:

The introduction of cost recovery complements the government's commitment to streamlining environmental approvals under the one-stop shop process by ensuring Commonwealth assessment activities are as efficient and effective as possible.²¹

Issues related to action management plan proposals

3.17 The Cost Recovery Bill aims to set out the formal process for developing, submitting and varying action management plans under the EPBC Act thus allowing for cost recovery for activities associated with approving these plans. The proposed addition of section 134A would allow the minister to seek public comment on a proposed action management plan, but does not make it mandatory.

17 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40.

18 Dr Rachel Bacon, Department of the Environment, *Committee Hansard*, 10 June 2014, p. 40. See also Department of the Environment, *Submission 33*, p. 8.

19 Department of the Environment, *Submission 33*, p. 9.

20 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

21 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 5.

3.18 Lock the Gate Alliance commented in relation to these amendments. While supporting moves to provide the opportunity for public comment on the making of management plans for managing the impacts of projects on matters of national environmental significance, the Alliance argued that this should be a requirement for all management plans, not a discretionary measure for the Minister to determine. In addition, while supporting the 'basic idea' of the requirement for ministerial approval of changes to management plan, the Alliance submitted that there was a need for public scrutiny of these decisions.²²

3.19 Finally, the Hon. Mr Greg Hunt MP, Minister for the Environment, explained that the changes to provisions relating to action management plans were designed to bring those plans into the cost recovery regime and give the minister the flexibility to specify required environmental outcomes or management strategies as more data becomes available or new technologies are developed.²³

Conclusion

3.20 The committee is of the view that as proponents gain the benefit of an activity approved under the EPBC Act, it is appropriate that they should contribute to the costs of approval. The committee notes that the department has undertaken extensive consultation in relation to these reforms and that amendments were made to the proposal before the bill was introduced into the Parliament.

3.21 In addition, the committee notes that the Hon. Mr Greg Hunt MP, Minister for the Environment, indicated in his second reading speech that the waiver capacity will be available in relation to public institutions such as local government.

3.22 In combination with the one stop shop proposal, the committee also considers that the cost recovery proposals will result in more efficient and sustainable environmental approvals processes.

Recommendation 2

3.23 The committee recommends that the Environment Protection and Biodiversity Conservation Amendment (Cost Recovery) Bill 2014 be passed.

Senator John Williams
Chair

22 Lock the Gate Alliance, *Submission 24*, p. 2.

23 The Hon. Mr Greg Hunt MP, Minister for the Environment, *House of Representatives Hansard*, 14 May 2014, p. 4.

